

ILLINOIS REGISTER
DEPARTMENT OF REVENUE
NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Income Tax
- 2) Code Citation: 86 Ill. Adm. Code 100
- 3)

<u>Section Numbers:</u> 100.7310 100.7325	<u>Proposed Actions:</u> Amendment Amendment
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- 4) Statutory Authority: 35 ILCS 5/704A
- 5) A Complete Description of the Subjects and Issues Involved: This rulemaking amends Sections 100.7310 and 100.7325 to terminate the programs allowing annual filing of withholding returns and annual payment of taxes withheld, because too many employers were confused by the programs and made incorrect filings and payments.
- 6) Published studies or reports and sources of underlying data used to compose this rulemaking: None
- 7) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other proposed rulemakings pending on this Part? Yes.

<u>Section Numbers</u>	<u>Proposed Actions</u>	<u>Illinois Register Citation</u>
100.3380	Amendment	40 Ill. Reg. 15878; December 2, 2016
100.3390	Amendment	40 Ill. Reg. 15878; December 2, 2016
- 11) Statement of Statewide Policy Objective: This rulemaking does not create a State mandate, nor does it modify any existing State mandates.
- 12) Time, Place and Manner in which interested persons may comment on this rulemaking: Persons who wish to submit comments on this rulemaking may submit them in writing by no later than 45 days after publication of this Notice to:

Brian Stocker
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Legal Services Office
101 West Jefferson
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(217) 782-2844

13) Initial Regulatory Flexibility Analysis:

- A) Types of small businesses, small municipalities and not-for-profit corporations affected: This provides guidance on small businesses who were or might have become eligible to file withholding returns annually rather than quarterly and make payments of withheld taxes annually rather than quarterly, and will no longer be allowed to do so.
- B) Reporting, bookkeeping or other procedures required for compliance: None
- C) Types of professional skills necessary for compliance: None

14) Regulatory Agenda on which this rulemaking was summarized: July 2016

The full text of the Proposed Amendments begins on the next page:

SUBPART V: EMPLOYER'S RETURN AND PAYMENT OF TAX WITHHELD

Section 100.7310 Returns Filed and Payments Made on Annual Basis (ITA Sections 704 and 704A)

- a) With respect to taxes withheld or required to be withheld prior to January 1, 2008:
 - 1) In general. Effective January 1, 2005, if an employer had no obligation to deduct and withhold Illinois income tax in the previous calendar year or if the amount of tax deducted and withheld during the previous calendar year was less than \$500 and, in either case, the amount that will be deducted and withheld in the current calendar year will be less than \$500, the employer may file an annual return for the current calendar year or for any period for which a return is made as a final return. No application need be made to file an annual return. The return filed for such period shall report the amount of tax deducted and withheld during the period and not previously remitted. Form IL-941 is prescribed for making the return authorized under this subsection (a). An employer shall use Form W-3 to submit the information contained on the combined Form W-2, in the same manner as required under Section 100.7300.
 - 2) Duration of annual filing status. Authority to file a return pursuant to this Section shall remain in effect until that time during any calendar year when the amount of tax deducted and withheld equals or exceeds \$500. When, during any calendar year, the amount deducted and withheld equals or exceeds \$500, an employer must file a quarterly return, as required under Section 100.7300(a), for the quarter in which that event occurs and for all

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subsequent quarters until the requirements of subsection (a)(1) are again met by the employer.

b) With respect to any calendar year beginning on or after January 1, 2008 and ending prior to January 1, 2012:

- 1) An employer who has timely filed all returns due under IITA Sections 704 or 704A during the look-back period for a calendar year, reporting on those returns a total liability of \$1,000 or less, and who timely paid the amounts reported, may file a single annual return for that calendar year and pay the tax required to be withheld during that calendar year when that return is due. An employer who was not required to file returns during the look-back period is not eligible under this subsection (b)(1) to make annual filings or payments. (See IITA Section 704A(d)(1).)
- 2) Any employer that is eligible to make an annual filing and payment for a calendar year under subsection (b)(1) and who withholds or is required to withhold more than \$12,000 in any quarter of that year must:
 - A) make a quarterly return for that quarter, reporting and paying all amounts withheld or required to be withheld during the year through the end of that quarter with that return;
 - B) make a quarterly return for each subsequent quarter of that calendar year and for each quarter of the following calendar year; and
 - C) make semi-weekly payments of taxes withheld or required to be withheld during the remaining quarters of that calendar year and during the following calendar year. (See IITA Section 704A(c)(2).)
- 3) An employer that is eligible to make an annual filing and payment under subsection (b)(1) for any calendar year after 2008 may elect to file quarterly returns under Section 100.7300(a) and make monthly payments under Section 100.7300(d)(2) by filing a return for any quarter of that year. Payment of all amounts withheld or required to be withheld through the end of that quarter shall be due with the filing of that return, and the employer shall be required to make monthly payments and quarterly returns for the remainder of that year, unless Section 100.7300(d)(1)(B) requires semi-weekly payments.

c) With respect to any calendar year beginning on or after January 1, 2012 and ending prior to January 1, 2017:

- 1) An employer who has timely filed all returns due under IITA Section 704A during the look-back period for a calendar year, reporting on those returns

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a total liability of \$12,000 or less, and who timely paid the amounts reported, may file a single annual return for that calendar year. An employer who was not required to file returns during the look-back period is not eligible under this subsection (c)(1) to make annual filings. (See IITA Section 704A(d)(1).)

- 2) An employer who is allowed to file an annual return for a calendar year under subsection (c)(1) and who reported a total liability of \$1,000 or less on returns filed during the look-back period for that year may pay the tax required to be withheld during that calendar year when that return is due. (See IITA Section 704A(d)(1).)
- 3) Any employer who is eligible to make an annual filing for a calendar year under subsection (c)(1) and who withholds or is required to withhold more than \$12,000 in any quarter of that year must:
 - A) make a quarterly return for that quarter, reporting and paying all amounts withheld or required to be withheld during the year through the end of that quarter with that return;
 - B) make a quarterly return for each subsequent quarter of that calendar year and for each quarter of the following calendar year; and
 - C) make semi-weekly payments of taxes withheld or required to be withheld during the remaining quarters of that calendar year and during the following calendar year. (See IITA Section 704A(c)(2).)
- 4) An employer who is eligible to make an annual filing under subsection (c)(1) for any calendar year after 2011 may elect to file quarterly returns under Section 100.7300(a) by filing a return for any quarter of that year. Payment of all amounts withheld or required to be withheld through the end of that quarter shall be due with the filing of that return, and the employer shall be required to make monthly payments and file quarterly returns for the remainder of that year, unless Section 100.7300(d)(1)(B) requires semi-weekly payments.
- 5) An employer who is eligible to make an annual payment under subsection (c)(2) for any calendar year after 2011 may make payments during that calendar year and, unless an election to file quarterly returns is made under subsection (c)(4) for that year, file an annual return for that year.

d) [With respect to any calendar year beginning on or after January 1, 2017, no annual filings or payments made on an annual basis are permitted, except as provided in Section 100.7350.](#)

(Source: Amended at 41 Ill. Reg. _____, effective _____)

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Section 100.7325 Time for Filing Returns and Making Payments for Taxes Required to Be Withheld On or After January 1, 2008 (IITA Section 704A)

- a) Quarterly return. Each return required under Section 100.7300(a) shall be filed on or before the last day of the first calendar month following the calendar quarter for which the return is made. (See IITA Section 704A(b).)
- b) Monthly payments. Monthly payments required under Section 100.7300(d)(2) are due on or before the 15th day of the month following the month in which the tax was withheld or required to be withheld. (See IITA Section 704A(c)(3).)
- c) Semi-weekly payments.
 - 1) Semi-weekly payments required under Section 100.7300(d)(1) or 100.7310(b)(2)(B) are due:
 - A) on or before each Friday of the calendar year, for taxes withheld or required to be withheld on the immediately preceding Saturday, Sunday, Monday or Tuesday;
 - B) on or before each Wednesday of the calendar year, for taxes withheld or required to be withheld on the immediately preceding Wednesday, Thursday or Friday. (See IITA Section 704A(c)(1).)
 - 2) If a payment due on a Friday or Wednesday under this subsection (c) would include amounts withheld in two different quarters, a separate payment must be made for the amounts withheld in each quarter.
 - 3) Under 26 CFR 31.6302-1(c)(2)(iii), semi-weekly depositors are given at least three banking days following the close of the semi-weekly period by which to deposit taxes during the semi-weekly period. Thus, if any of the three weekdays following the close of a semi-weekly period is a holiday on which banks are closed, the employer has an additional banking day by which to make the required deposit. For example, if the Monday following the close of a Wednesday to Friday semi-weekly period is a holiday on which banks are closed, the required deposit for the semi-weekly period may be made by the following Thursday rather than the following Wednesday. Under IITA Section 704A(d)(2), the Department may provide by regulation that any payment due under this subsection (c) *is deemed to be timely to the extent paid by electronic funds transfer on or before the due date for deposit of federal income taxes withheld from, or federal employment taxes due with respect to, the wages from which the Illinois taxes were withheld.* Accordingly, employers making electronic payments

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of taxes withheld may use the due dates prescribed in 26 CFR 31.6302-1(c)(2)(iii).

- 4) *Beginning with calendar year 2011, semi-weekly payments required under Section 100.7300(d)(1) must be made by electronic funds transfer. (IITA Section 704A(c)(1))*
- d) Annual returns. Annual returns are due on or before:
 - 1) January 31 of the year following the calendar year for which the return is made, in the case of an annual return under Section 100.7310(b)(1) (See IITA Section 704A(d)(1).); or
 - 2) the 15th day of the 4th month following the close of the taxpayer's tax year, in the case of an annual return under Section 100.7350. (See IITA Section 704A(e).)
 - 3) Except as provided in Section 100.7350, annual filings are not permitted for calendar years beginning on or after January 1, 2017.

(Source: Amended at 41 Ill. Reg. _____, effective _____)